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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,302	12/20/2001	Stephane Bouet	4208-4066	1313
27123 7590 12/31/2007 MORGAN & FINNEGAN, L.L.P. 3 WORLD FINANCIAL CENTER NEW YORK, NY 10281-2101			EXAMINER DALENCOURT, YVES	
			ART UNIT	PAPER NUMBER
			2157	
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			12/31/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/027,302

Applicant(s)

BOUET, STEPHANE

Examiner

Yves Dalencourt

Art Unit

2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-12,14,15 and 18-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-10,18-20 and 39 is/are allowed.
- 6) ☒ Claim(s) 11-12, 14-15, and 18-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is responsive to amendment filed on 10/11/2007.

Response to Amendment

The Examiner has acknowledged the amended claims 11, 24, 36, and the submission of new claims 40 and 41.

Response to Arguments

Applicant's arguments filed on 10/11/2007 have been fully considered but they are not persuasive.

Regarding Applicant's argument (page 12), that the Examiner's characterization of the Dan reference is incorrect. The Examiner respectfully disagrees with Applicant's assertion because Dan discloses that "Optionally, a Header & Footer Object form 205, for example, in the Object Manager 155 and/or in the Site Manager 116, as shown, by way of example, in FIG. 9, may be provided for creating, modifying, and/or deleting header and/or footer objects. **Header and footer objects may, for example, enable a user to attach content to a header, a top portion of a web page and/or to a footer, a bottom portion of a web page.** A header object may include, for example, a banner ad object 210. A footer object may include, for example, a contact information object 215 "It is known that HTML documents contain headers and bodies (including the banner which is a picture. Thus, based on the cited passage of Dan (col. 17, lines 20, lines 20 – 29).

Regarding Applicant's argument (page 12, last paragraph), the Examiner wants to point out that HTTP protocol allows display of downloaded objects prior to the completion of the page transfer, or in other words, during packet transfers) (see US 2007/0130023, paragraph 0098) to support such allegation).

In fact, it appears that Applicants are interpreting the claims very narrow without considering the broad teaching of the references used in the rejection.

Applicants are reminded that the examiner is entitled to the broadest reasonable interpretation of the claims. Applicants always have the opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater 162 USPQ 541,550-51 (CCPA 1969).

In view of such, the rejection is as follows:

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 11, 36, 40, and 41 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably

convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claims 11, 36, 40, and 41, the limitation " a display for displaying said at least a portion of said image data **rather than said content** on said receiving device while waiting said ongoing file transfer to complete " is not described in the specification. It has not been disclosed in the specification how such limitation is taken place. Therefore, one skilled in the art would not know how to make and/or use the invention. In fact, through the specification, for example in paragraphs [0006] and [00024], Applicant discloses that this "downtime" presents an opportunity to display graphical images on the receiving device to convey information. The displayed information could include **advertisement content** for use promoting products which could have the possibility of changing depending on the users location. Thus, the content is being displayed since "image data " is in fact content.

Claims 12, 14, 21, 22, and 23 are necessarily rejected as being dependent upon the rejection of claims 11, 36, 40, and 41.

The Examiner has not given any weight to the added limitations to the claims since there is no support in the specification for such limitations.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 12, 14, 15, and 21 - 38 are rejected under 35 U.S.C. 103(a) as unpatentable over Dan et al (US 6,560,639; hereinafter Dan).

In reference to claim 11, Dan shows a system for sending, during an ongoing file transfer operation in which content is sent from a sending device to a receiving device, image data in addition to said content, wherein at least a portion of the image data is embedded in at least one of a plurality of packets of said ongoing file transfer [See Fig. 1 for Browser and Web Server. See Fig. 21 for image data in addition to said content, or see lines 20-29, column 17 for including "banner object", which is a picture in the header] wherein said packet transfer is comprised of a plurality [Each unit of information is given in a single "packet" or an HTML document], the system comprising: a sending device for embedding and sending at least a portion of the image data in said at least one of the plurality of packets [The server or browser sends "the object"]; a receiving device for receiving said at least a portion of said image data from the sending device [10, Fig. 2; As discussed above, the image data is carried within "header" of the

packets. The header is, of course, header of the html document]; and a display for displaying said at least a portion of said image data on said receiving device during said ongoing file transfer (Display is the web browser, See line 41-44, column 9. HTTP protocol allow display of downloaded objects prior to the completion of the page transfer, or in other words, during packet transfers).

In Fig. 21, Dan does not show that the banner is in "addition to said content."

It would have been obvious to one of ordinary skill in the art at the time of the invention to have web page content, so that the web page header information is sent "in addition" to the web page content.

In reference to claim 12, Dan shows a system according to claim 11 wherein the image data is a picture or series of pictures [See lines 20-29, column 17 for including banner object within the header].

In reference to claim 14, Dan shows a system according to claim 11 wherein the sending device is a wireless device [Fig. 1; col. 28, line 66 through col. 29, line 12].

In reference to claim 15, Dan shows a system according to claim 11 wherein the sending device is a wireless device having a graphics capable display [See lines 29-37, column 25 and lines 22-26, column 31].

Claims 21 and 24-26 substantively restate the limitations of claims 17 (prior to cancellation), 11 and 17 (prior to cancellation), but in apparatus form rather than in method form, respectively. The reasons for the rejections of claims 17 (prior to cancellation), 11, 16, and 17 (prior to cancellation) apply to claims 21 and 24-26, respectively. For the ground of rejection of claim 17, see the second Office action.

In reference to claims 22 and 27, Dan does not show the headers include parameters that control the display of the image data on a display of the receiving device during the ongoing packet transfer. However, Dan shows HTML tags and their use for creating HTML documents. It would have been obvious to one of ordinary skill in the art at the time of the invention to insert image and its associated display parameters in the banner (in Fig. 9) using = "filename" width=y height=y> tag of HTML, so that the displayed image fits in the page that displays the image.

Claims 23 and 34 substantively restate the limitations of claims 14 and 15, but in apparatus form rather than in method form. The reasons for the rejections of claims 14 and 15 apply to claims 23 and 34.

In reference to claim 28, Dan shows an apparatus according to claim 24 wherein the image data and the content are transmitted wirelessly [See Fig. 1].

Claims 29, 40, and 41 substantively restates the limitations of claim 11, even though limitations are phrased differently and they are addressed to apparatus. The reasons for the rejections of claim 11 apply to claims 29, 40, and 41.

Claims 30 and 31 substantively restate the limitations of claims 16, and 17 (now cancelled), but in apparatus form rather than in method form, respectively. The reasons for the rejections of claims 16 and 17 apply to claims 30 and 31, respectively.

Claims 32 and 33 substantively restate the limitations of claims 22 and 27, but in apparatus form rather than in method form. The reasons for the rejections of claims 22 and 27 apply to claims 32 and 33.

Claim 35 contains rephrased versions of claims 24, 26, and 27, in method form.

The reasons for the rejections of claims 24, 26, and 27 apply to claim 35.

Claim 36 contains rephrased versions of the limitations of claims 11, 24, 26, and 27, in apparatus form. The reasons for the rejections of claims 11, 24, 26, and 27 apply to claim 35.

Claim 37 substantively contains the limitations of claim 35, but in apparatus form. The reasons of the rejection of claim 35 apply to claim 37.

Claim 38 is substantively as same as claims 35-37, except that it cites: removing the additional image data from the one or more content packets during the ongoing data transfer operation [See lines 29-37, column 25 in Dan].

Allowable Subject Matter

Claims 1, 3 – 10, 18 – 20, and 39 are allowed.


Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yves Dalencourt whose telephone number is (571) 272-3998. The examiner can normally be reached on M-TH 7:30AM - 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272 4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

December 23, 2007


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